

FIRST REGULAR SESSION

HOUSE BILL NO. 774

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOSMER.

Read 1st time February 14, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1665L.011

AN ACT

To repeal sections 632.480, 632.489 and 632.492, RSMo 2000, relating to sexually violent predators, and to enact in lieu thereof three new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 632.480, 632.489 and 632.492, RSMo 2000, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 632.480, 632.489 and 632.492, to
3 read as follows:

632.480. As used in sections 632.480 to 632.513, the following terms mean:

2 (1) "Agency with jurisdiction", the department of corrections or the department of mental
3 health;

4 (2) "Mental abnormality", a congenital or acquired condition affecting the emotional or
5 volitional capacity which predisposes the person to commit sexually violent offenses in a degree
6 constituting such person a menace to the health and safety of others;

7 (3) "Predatory", acts directed towards [strangers or individuals with whom relationships
8 have been established or promoted] **individuals, including family members**, for the primary
9 purpose of victimization;

10 (4) "Sexually violent offense", the felonies of forcible rape, rape, statutory rape in the
11 first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to
12 commit any of the preceding crimes, or child molestation in the first or second degree, sexual
13 abuse, sexual assault, deviate sexual assault, or the act of abuse of a child as defined in
14 subdivision (1) of subsection 1 of section 568.060, RSMo, which involves sexual contact, and
15 as defined in subdivision (2) of subsection 1 of section 568.060, RSMo;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (5) "Sexually violent predator", any person who suffers from a mental abnormality which
17 makes the person more likely than not to engage in predatory acts of sexual violence if not
18 confined in a secure facility and who:

19 (a) Has pled guilty or been found guilty, or been found not guilty by reason of mental
20 disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense; or

21 (b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and
22 statutes in effect before August 13, 1980.

632.489. 1. Upon filing a petition pursuant to section 632.484 or 632.486, the judge
2 shall determine whether probable cause exists to believe that the person named in the petition
3 **[is] may meet the definition of** a sexually violent predator. If such probable cause
4 determination is made, the judge shall direct that person be taken into custody and direct that the
5 person be transferred to an appropriate secure facility, including, but not limited to, a county jail.
6 If the person is ordered to the department of mental health, the director of the department of
7 mental health shall determine the appropriate secure facility to house the person.

8 2. Within seventy-two hours after a person is taken into custody pursuant to subsection
9 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided
10 with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as
11 to whether the detained person **[is] may meet the definition of** a sexually violent predator. At
12 this hearing the court shall:

13 (1) Verify the detainee's identity; and

14 (2) Determine whether probable cause exists to believe that the person **[is] may meet**
15 **the definition of** a sexually violent predator. The state may rely upon the petition and
16 supplement the petition with additional documentary evidence or live testimony.

17 3. At the probable cause hearing as provided in subsection 2 of this section, the detained
18 person shall have the following rights in addition to the rights previously specified:

19 (1) To be represented by counsel;

20 (2) To present evidence on such person's behalf;

21 (3) To cross-examine witnesses who testify against such person; and

22 (4) To view and copy all petitions and reports in the court file, including the assessment
23 of the multidisciplinary team.

24 4. **If the judge finds that probable cause has not been established pursuant to**
25 **subsection 1 or 2 of this section, the attorney general may appeal.**

26 5. **In any appeal brought pursuant to subsection 4 of this section and upon a**
27 **showing that the person named in the petition has engaged in predatory acts of sexual**
28 **violence in the past and may be a menace to the health and safety of others if released, the**
29 **judge or appellate court may order the person be held in an appropriate secure facility,**

30 **including but not limited to a county jail, pending the appeal. If the person named in the**
31 **petition is held pending the appeal, such appeal shall be conducted on an expedited basis.**

32 6. If the probable cause determination is made, the court shall direct that the person be
33 transferred to an appropriate secure facility, including, but not limited to, a county jail, for an
34 evaluation as to whether the person is a sexually violent predator. If the person is ordered to the
35 department of mental health, the director of the department of mental health shall determine the
36 appropriate secure facility to house the person. The court shall direct the director of the
37 department of mental health to have the person examined by a psychiatrist or psychologist as
38 defined in section 632.005 who was not a member of the multidisciplinary team that previously
39 reviewed the person's records. In addition, **either party may have** such person [may be]
40 examined by a consenting psychiatrist or psychologist of [the person's] **either party's** choice at
41 the [person's] **requesting party's** own expense. Any examination shall be conducted in the
42 facility in which the person is confined. Any examinations ordered shall be made at such time
43 and under such conditions as the court deems proper; except that, if the order directs the director
44 of the department of mental health to have the person examined, the [director] **evaluator** shall
45 determine the time, place and conditions under which the examination shall be conducted,
46 **including who may be present during the evaluation.** The psychiatrist or psychologist
47 conducting such an examination shall be authorized to interview family and associates of the
48 person being examined, as well as victims and witnesses of the person's offense or offenses, for
49 use in the examination unless the court for good cause orders otherwise. The psychiatrist or
50 psychologist shall have access to all materials provided to and considered by the
51 multidisciplinary team and to any police reports related to sexual offenses committed by the
52 person being examined. Any examination performed pursuant to this section shall be completed
53 and filed with the court within sixty days of the date the order is received by the director or other
54 evaluator unless the court for good cause orders otherwise. One examination shall be provided
55 at no charge by the department. All costs of any subsequent evaluations shall be assessed to the
56 party requesting the evaluation.

 632.492. Within sixty days after the completion of any examination held pursuant to
2 section 632.489, the court shall conduct a trial to determine whether the person is a sexually
3 violent predator. The trial may be continued upon the request of either party and a showing of
4 good cause, or by the court on its own motion in the due administration of justice, and when the
5 respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to
6 sections 632.480 to 632.513, any person subject to sections 632.480 to 632.513 shall be entitled
7 to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist
8 such person. The person, the attorney general, or the judge shall have the right to demand that
9 the trial be before a jury. If no demand for a jury is made, the trial shall be before the court. **The**

10 **court shall conduct all trials pursuant to this section in open court, except as otherwise**
11 **provided for by the child victim witness protection law pursuant to sections 491.675 to**
12 **491.705, RSMo.**